

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAY MICHAUD,

Defendant.

NO. CR15-05351-RJB

**GOVERNMENT'S MOTION FOR IN-
CAMERA REVIEW**

Noting Date: November 20, 2015

The Government respectfully requests the Court's permission to file a sealed letter for *in-camera review, ex parte*. This letter will provide specific and articulable details related to an ongoing criminal investigation into the users of a website dedicated to the advertisement and distribution of child pornography that is related to this case, as further evidence of why vacating or modifying the stipulated Protective Order would seriously jeopardize the ongoing investigation into targets who engage in the sexual exploitation and abuse of children.

Rule 16 gives the court authority to deny, restrict or defer discovery upon a sufficient showing. The Ninth Circuit has approved a court's use of *in camera* review in order to protect the "[g]overnment's interest in having FBI documents, which relate to an ongoing investigation, remain confidential." Meridian Int'l Logistics, Inc. v. United States, 939 F.2d 740, 745 (9th Cir.

1 1991). Such authority to review materials *in camera* has also been recognized, among other
2 contexts, where there is a “need . . . to keep sensitive information from the opposing party,”
3 United States v. Thompson, 827 F.2d 1254, 1258 (9th Cir. 1987), to determine whether to reveal
4 the identity of a government informant, *see, e.g., United States v. McLaughlin*, 525 F.2d 517, 519
5 (9th Cir. 1975), and to determine whether requested materials are subject to disclosure pursuant
6 to *Brady v. Maryland*. *See United States v. Dupuy*, 760 F.2d 1492, 1501 (9th Cir. 1985) (*in*
7 *camera* review of plea bargain notes); *United States v. Hsieh Hui Mei Chen*, 754 F.2d 817, 824
8 (9th Cir. 1985) (*in camera* review of Border Patrol report).

11 At least one court has specifically used *in camera* review in the exact context as this case
12 – where law enforcement seeks a protective order relating to information that could jeopardize an
13 ongoing investigation. *See United States v. Smith*, 985 F. Supp. 2d 506, 530 (S.D.N.Y. 2013)
14 (granting protective order after *in camera* review of letter containing specific details of ongoing
15 investigation). In that case, the Government sought a protective order under Rule 16(d),
16 explaining that “disclosure of the discovery materials might impede its ongoing investigations.”
17 985 F. Supp. 2d 506, 530 (S.D.N.Y. 2013) (internal quotation marks omitted). “In particular, the
18 Government contended that public dissemination of the discovery materials ‘[would] alert
19 possible subjects of the investigation to the Government’s interest in them,’ and [would]
20 ‘compromise the ability of individuals named in the discovery to assist the Government in its
21 continuing efforts to ferret out wrongdoing by putting subjects on notice of the risk that these
22 individuals [were] cooperating with law enforcement authorities.’” *Id.* at 530–31. The district
23 court observed that “materials, including even judicial documents which are presumptively
24 accessible, can be kept from the public if their dissemination might ‘adversely affect law
25 enforcement interests.’” *Id.* at 531 (quoting *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d

1 Cir. 1995)). “Thus, where public disclosure of certain materials might officially reveal the
2 sources and methods law-enforcement officials have used, and will continue to use, to
3 investigate other criminal conduct related to the publicly filed charges, courts have found it
4 appropriate to enter a protective order.” *Id.* (citing cases).
5

6 In *Smith*, the government provided a sealed letter for *in camera* review in which it
7 “provided specific details of ongoing investigations that [were] related to the discovery materials
8 . . . in [the] case.” *Id.* The court found that “the letter adequately establishe[d] both that there
9 [were] ongoing investigations into criminal conduct related to the discovery materials . . . and
10 that public disclosure of some of these materials plausibly could undermine these investigations”
11 by “reveal[ing] the targets of the investigations and the suspected criminal conduct being
12 investigated,” “disclos[ing] the type of evidence being collected,” and “officially confirm[ing]
13 who some of the cooperating witnesses in the[] investigations [were].” *Id.* at 531–32. That
14 information, “should it become publicly available,” the court concluded, “could alert the targets
15 of the investigation and could lead to efforts by them to frustrate the ongoing investigations.” *Id.*
16 at 532. The government requests that the Court allow it to follow the same procedure here.
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1 For the above-stated reasons, the United States respectfully requests permission to file
2 sealed letter for *in-camera review, ex parte*.

3 DATED this 6th day of November, 2015.
4

5 Respectfully submitted,
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